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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,803	11/12/2003	Mark R. Hofmeister	SUC4USA	6944

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EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

E4

Office Action Summary	Application No. 10/706,803	Applicant(s) HOFMEISTER ET AL.	
	Examiner Marlon T. Fletcher	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-17 and 19-28 is/are rejected.
- 7) ☒ Claim(s) 5 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6, 7, 9-17, 19-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishitani et al. (2001/0015123).

As recited in claim 1, Nishitani et al. ('123) disclose a baton (fig. 4A) for cooperation with an electronic tone generation system to produce different audible sounds in response to different movements of the baton, comprising: a housing having an end portion grippable by a user's hand (page 4, paragraph 218) for movement in a plane between at least a first free position and a second surface engaging position (figs. 4 A, 13, and page 10, paragraph 151); a motion sensor (MSa, MS1) carried in said housing a spaced distance from said end portion for producing an electromagnetic signal in response to said movements (page 6, paragraphs 107-108; and page 19, paragraph 225); and a signal processor (CPU) carried in said housing (figure 2) for cooperating with said motion sensor (MSa) to produce a transmittable play signal corresponding to movement of the baton to said first position and a transmittable mute signal corresponding to movement to said second position; whereby the user is able to produce either full or muted sounds by moving the baton between said first and second positions (fig. 3 and Page 6, para. 110-111).

As recited in claim 2, Nishitani et al. ('123) disclose a baton, wherein said motion sensor and signal processor cooperate to permit the baton to produce a transmittable play signal only when said baton is moved substantially in said plane of movement (pg. 9, para. 137-138).

As recited in claims 3, 11-13, and 20, Nishitani et al. ('123) disclose a baton, wherein said motion sensor includes a piezoelectric reed which is mounted in said housing to flex about an axis transverse to said plane of movement (Piezo use; pg. 39 para 386; pg. 40, para. 399).

As recited in claims 4 and 14, Nishitani et al. ('123) disclose a baton, wherein said baton includes visible indicia means carried on said housing for providing the user with information on the proper orientation of the baton with its desired plane of movement (figure 4A).

As recited in claim 6, Nishitani et al. ('123) disclose a baton, wherein said baton carries a rechargeable battery (T8) in said housing end portion and a recharging port (T4) adjacent said battery (figure 2; and pg. 9, para. 139).

As recited in claim 7, Nishitani et al. ('123) disclose a baton, wherein said baton housing carries a visible light source remote from said end portion to indicate the level of charge of said battery (pg. 9, para 139).

As recited in claims 9, 19, and 21-22, Nishitani et al. ('123) disclose a wireless handheld baton for communicating with a receiver of an electronic tone generation system that produces audible sounds in response to movements of the baton, comprising: a housing having a grippable end portion; a motion sensor (MSa) carried in

said housing a spaced distance from said end portion for generating an electromagnetic waveform signal in

response to movements of the baton, said motion sensor generating waveforms of different shapes that are produced as a function of baton orientation and direction of movement (figure 10); and a signal processor and transmitter carried in said housing for receiving said electromagnetic waveform signal from said motion sensor and for selectively transmitting a wireless electromagnetic signal from the baton to the receiver of the electronic tone generation system to produce an audible sound only when said electromagnetic waveform signal is within a predetermined range of waveform shapes (fig. 3). Nishitani et al. ('123) disclose a baton, wherein said motion sensor generates electromagnetic waveform signals having alternating polarity (pg. 14, para 180).

As recited in claims 10, 15, and 17, Nishitani et al. ('123) disclose a baton, wherein said motion sensor generates electromagnetic waveform signals having alternating polarity (pg. 14, para 180).

As recited in claim 15, Nishitani et al. ('123) disclose a baton, wherein said amplitude of said section of said waveform determines a relative volume level of the audible sound produced in response to movement of the baton (pg 1, para 7; and pg 2, para 23-24).

As recited in claim 23, Nishitani et al. ('123) disclose an electronic tone generation system, wherein each baton has a unique identification code, and wherein each transmitter includes information concerning said identification code of said baton in each wireless transmission (fig. 13; and page 19; para 225).

As recited in claim 24, Nishitani et al. ('123) disclose an electronic tone generation system, wherein each baton includes a set of DIP switches for setting said identification code (page 21, para 242; and page 22, para 245).

As recited in claim 25, Nishitani et al. ('123) disclose an electronic tone generation system, wherein each baton has a microprocessor, wherein said transmitter of each baton is a transceiver that enables said transmitter to operate in a "listen before speak" mode to avoid interference with other transmitters and wherein, when a wireless transmission is received by said transceiver during said listen before speak mode, a delay time for transmitting a wireless transmission is determined by said microprocessor as a function of the identification code of said received transmission (fig. 20).

As recited in claim 26, Nishitani et al. ('123) disclose electronic tone generation system, wherein said output signal generated by said receiver is a MIDI output signal (figure 3).

As recited in claim 27, Nishitani et al. ('123) disclose an electronic tone generation system, further comprising a MIDI tone generator, amplifier and at least one speaker for producing an audible sound from said MIDI output signal (figure 3).

As recited in claim 28, Nishitani et al. ('123) disclose an electronic tone generation system, wherein different batons are capable of being pre-set to produce different audible sounds (pg 19, para 225).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishitani et al. ('123).

Nishitani et al. are discussed above. Nishitani discloses a plurality of batons which are all chargeable (figure 13).

Nishitani et al. ('123) do not disclose a charging stand.

Official Notice is taken with respect to charging stands being well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of the well known art with the teachings of Nishitani et al., because it merely allows the batons to be charged all at once in one location.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.


Allowable Subject Matter

6. Claims 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-W, F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Marlon T Fletcher
Primary Examiner
Art Unit 2837

MTF
April 2, 2005